

COMPILED BY BRUCE MCKAIN

Ready for any contingency in an inadequate Legal Aid system

Lorn Macintyre asks if Frank Lefevre and the firm Quantum Claims are an unstoppable force in Scots Law

AS you wait to be put through to Frank Lefevre in his office, the jingle on the phone isn't unlike the sound of an electronic cash register. The Aberdeen solicitor who is managing director of Quantum Claims Compensation Specialists boasts: "We are supporting 106 litigations in Scotland at present. We're looking at a similar type of arrangement for Glasgow, Edinburgh, and other places in Scotland." Yet the Law Society of Scotland insists it had a court ruling last October that contingency fees are illegal in Scotland.

They are common in America. Professor Alan Paterson of Strathclyde University is an authority on contingency fees, which he defines as "a contract for the provision of legal services in which the amount of the lawyer's fee is contingent in whole or in part upon the successful outcome of the case, either through settlement or litigation. Usually such agreements involve rewarding lawyers with higher fees than they would normally receive if they win, in return for running the risk of going without a fee if the case is lost."

Kenneth Pritchard, secretary of the Law Society of Scotland, explains why his organisation took Lefevre and Quantum to court: "We believe that the law — and we've been shown to be correct — even though it was established 150 years ago, was to the effect that you cannot charge a client a percentage and recover it out of the damages which the client gets."

"We raised this action against Mr Lefevre and Quantum Claims on the basis of the law, not necessarily on the way he was operating it, because he was operating it in a responsible way. But it was the method of operation which we objected to. He didn't charge an unduly high percentage; that was not to say that the next man wouldn't have charged a very much higher percentage. In the States some lawyers are charging as high as 40%, or perhaps even 50% of the damages."

But Lefevre says: "The Law Society required to test the situation on behalf of their members and presumably themselves to establish what could and could not be done. The action went on for three and a half years. After the first four days of the hearing for which we were awarded the expenses — which is hardly like the Law Society

winning, is it? — the Law Society amended their pleading and they then in their final form said: any contract that contains both of these elements will be illegal."

"I have never entered a contract with both of these elements present, that is, that the fee would be a proportion of the amount recovered, and would also be recoverable out of the monies obtained on settlement."

What is the difference between contingency fees and speculative fees? Kenneth Pritchard acknowledges that there is "enormous confusion" about the two types of fee. "In a speculative action if you fail the lawyer gets nothing. If you win the

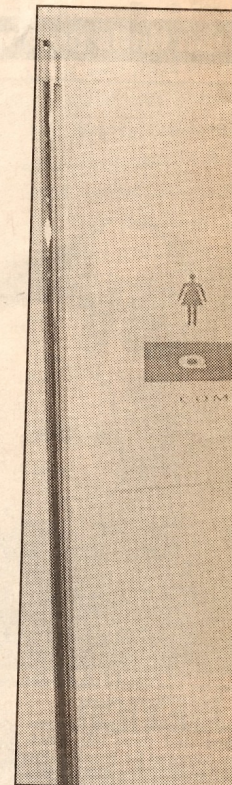
lawyer gets the expenses which would be awarded in his favour anyway, and no more. The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 allows in speculative actions an uplift in the fee, but that uplift hasn't been determined yet."

But Frank Lefevre isn't confused. Quantum is operating a contingency, not a speculative system. Pritchard points out: "If it's coming out of the damages awarded it is illegal and unenforceable; that's the terms of the judgment. If he's created a device to get round this then we would need to look very hard to see whether we would wish to go back to the court and say he is creating a device."

Quantum employs claims

handlers, not qualified lawyers, who have worked in claims departments in insurance companies. Lefevre says: "By far the most important thing to me is that the people who're employed by Quantum do it all day and every day and all the time, so if you've got a claim it's going to be looked at; it's not going to be diverted by a divorce, or an attendance in court, or a careless driving case, or pursuing somebody for money, which is what interrupts the lawyer's ability exclusively to do reparation work. We settle 99 out of 100 cases by a lot of hard work, investigation, negotiation, and then settlement."

Though Lefevre is the managing director of Quantum Claims,



Frank Lefevre: "V

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